

**DEPARTMENT OF STATE REVENUE**

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**LETTER OF FINDINGS NUMBER 97-0258-ST**

**Sales And Use Tax**

**For Tax Years 1993, 1994, And 1995**

**NOTICE:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Sales Tax - Unitary Transaction**

Authority: IC 6-2.5-1-1

Taxpayer protested a proposed assessment on services and labor performed on tangible personal property sold under a single order.

**STATEMENT OF FACTS**

Taxpayer is a supplier of metal products, architectural and structural. In general taxpayer buys bars, beams and columns. This stock material is then subject to cutting, welding, painting, cleaning and bending as specified by the customer. Most of these customers are building contractors and the purchased product is incorporated into improvements to real estate. The usual scenario between taxpayer and customer is customer places its order, taxpayer performs engineering or design work, labor to shape or prepare the product for use by the customer and deliver to the job site. The customer has a custom product fabricated for a specific application.

The proposed assessment was created by the imposition of a sales tax on the labor, other services and delivery charges associated with transactions involving sales to a non-exempt customer.

**DISCUSSION**

IC 6-2.5-1-1(a) reads in part:

Except as provided in subsection (b), "unitary transaction" includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated.

The regulations add further clarification at 45 IAC 2.2-4-1(b):

All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:

- (1) The price arrived at between purchaser and seller.
- (2) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.
- (3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to transfer of such property at retail.

and 45 IAC 2.2-4-3(a):

Separately stated delivery charges are considered part of selling at retail and subject to sales and use tax if the delivery is made by or on behalf of the seller of property not owned by the buyer.

Taxpayer argues that the operative regulations are those addressing contractors and construction materials, see 45 IAC 2.2-3-7 et seq. However, this argument misses the point. In the transactions subjected to the proposed assessment the taxpayer is a retail merchant, see IC 6-2.5-4-9, and not a contractor. Also, taxpayer attempts to characterize itself as a service provider (45 IAC 2.2-4-2). This argument fails as the tangible personal property is more than insignificant in value compared to total price paid by the customer.

In point of fact taxpayer fits within the four corners of transaction described in 45 IAC 2.2-4-1(b)(2). How or why taxpayer was given a no change audit in 1992 when the conduct and methods of the taxpayer are the same then as now is without an answer.

**FINDING**

Taxpayer's protest is denied. The Department finds taxpayer's charges for engineering, fabrication and delivery fall into a transaction stated in 45 IAC 2.2-4-1(b).